STATE OF MISSOURI
MISSOURI BOARD OF PHARMACY

IN RE:	)	
TAMARA KOLACNY, R.PH	)	
aka TAMARA NYACHIRA	)	
License No. 2019010826	)	Complaint No. 2020-001003
2621 S. Springdale St., Apt. 105	)	
Pittsburg, KS 66762	)	

SETTLEMENT AGREEMENT

Come now Tamara Kolacny, R.Ph. aka Tamara Nyachira ("Respondent" or "Licensee") and the Missouri Board of Pharmacy ("Board" or "Petitioner") and enter into this Settlement Agreement for the purpose of resolving the question of whether Respondent's license to practice pharmacy will be subject to discipline.

Pursuant to the terms of Section 536.060, RSMo, the parties hereto waive the right to a hearing by the Administrative Hearing Commission of the State of Missouri and, additionally, the right to a disciplinary hearing before the Board under Section 621.110, RSMo, and stipulate and agree that a final disposition of this matter may be effectuated as described below.

Respondent acknowledges that she understands the various rights and privileges afforded her by law, including the right to a hearing of the charges against her; the right to appear and be represented by counsel; the right to have all charges against her proven upon the record by competent and substantial evidence; the right to cross-examine any witnesses appearing at the hearing against her; the right to a decision upon the record by a fair and impartial administrative hearing commissioner concerning the charges pending against her and, subsequently, the right to a disciplinary hearing before the Board at which time she may present evidence in mitigation of discipline; and the right to recover attorney's fees incurred in defending this action against her license. Being aware of these rights provided her by operation of law, Respondent knowingly and

voluntarily waives each and every one of these rights and freely enters into this Settlement Agreement and agrees to abide by the terms of this document as they pertain to her.

Respondent acknowledges that she has received a copy of the draft Complaint to be filed with the Administrative Hearing Commission, the investigative report, and other documents relied upon by the Board in determining there was cause for discipline against Respondent's license.

For the purpose of settling this dispute, Respondent stipulates that the factual allegations contained in this Settlement Agreement are true and stipulates with the Board that Respondent's license to practice pharmacy, numbered 2019010826, is subject to disciplinary action by the Board in accordance with the provisions of Chapter 621 and Chapter 338, RSMo.

JOINT STIPULATION OF FACTS

1. The Board is an agency of the State of Missouri created and established pursuant to Section 338.140, RSMo[1], for the purpose of executing and enforcing the provisions of Chapter 338, RSMo.

2. Respondent Tamara Kolacny, aka Tamara Nyachira, is licensed as a pharmacist under the laws of the State of Missouri, License No. 2019010826. Respondent's license was at all times relevant herein current and active.

3. Respondent also is licensed in Kansas, but her Kansas license has been suspended effective April 14, 2020.

4. At all relevant times herein, Respondent was employed as a floating pharmacist for Walgreens and worked at several Walgreens stores.

1 All statutory references are to the Revised Statutes of Missouri 2016 as amended unless otherwise indicated.

5. On March 26, 2020, the Board received a complaint from a pediatric clinic indicating that prescriptions had been filled at two separate Walgreens pharmacies in the name of a physician who did not authorize the prescriptions.

6. On March 30, 2020, the Board received a report from Respondent's employer stating that Respondent had confessed to fraudulently creating prescriptions on two separate occasions for two of her children at two separate Walgreens locations.

7. On or about March 15, 2020, Respondent wrote, entered, reviewed, verified, dispensed and paid for four prescriptions at Walgreens #5624 for her two children in the name of a prescriber who had neither seen the children nor authorized the prescriptions.

8. The four prescriptions were for Tamiflu 75mg (oseltamivir) and augmentin 400mg (amox-clav).

9. These prescriptions were billed to Respondent's insurance.

10. On or about March 20, 2020, Respondent wrote, entered, reviewed, verified, dispensed and paid for six prescriptions at Walgreens #3594 for her two children in the name of a prescriber who had neither seen the children nor authorized the prescriptions.

11. The six prescriptions were for promethazine DM, azithromycin, and plaquenil 200mg (hydroxychloroquine).

12. These prescriptions were billed to Respondent's insurance.

13. Further investigation into Respondent's and her children's prescriptions by Petitioner showed additional fillings of unauthorized prescriptions by Respondent.

14. On or about January 5, 2018, Respondent entered, reviewed and sold one prescription for herself for Butalbital/acetaminophen/caffeine/codeine #100 at Walgreens #15798, Baxter Springs, Kansas. The physician listed on the prescriptions had not authorized it.

15. Codeine is a Schedule III controlled substance.

16. On or about May 7, 2018, Respondent entered, reviewed and sold one prescription for herself for Bupropion SR 250mg #180 at Walgreens #15798, Baxter Springs, Kansas. The physician listed on the prescription had not authorized it.

17. On or about July 9, 2018, Respondent entered, reviewed and sold one prescription for herself for Trinessa at Walgreens #15798, Baxter Springs, Kansas. The physician listed on the prescription had not authorized it.

18. On or about July 20, 2018, Respondent entered, reviewed and sold one prescription for herself for Butalbital/acetaminophen/caffeine/codeine #100 at Walgreens #15798, Baxter Springs, Kansas. The physician listed on the prescription had not authorized it.

19. On or about January 25, 2019, Respondent entered, reviewed and sold one prescription for herself for Butalbital/acetaminophen/caffeine/codeine #100 at Walgreens #15798, Baxter Springs, Kansas. The physician listed on the prescription had not authorized it.

20. On or about July 22, 2019, Respondent wrote, entered, reviewed, verified and sold one prescription for her daughter for permethrin 5% cream at Walgreens #5928, Webb City, Missouri. The physician listed on the prescription had not authorized it.

21. On or about July 22, 2019, Respondent wrote, entered, reviewed, verified and sold three prescription for her son for permethrin 5% cream, ketoconazole 2% cream and ketoconazole 2% shampoo at Walgreens #3688, Springfield, Missouri. The physician listed on the prescriptions had not authorized them.

22. On or about February 14, 2020, Respondent entered, reviewed and sold one prescription for herself for Amoxicillin 250mg chew tab #100 at Walgreens #15798, Baxter Springs, Kansas. The physician listed on the prescription had not authorized it.

23. When asked to respond to these unauthorized prescription fillings for her children and herself revealed during Petitioner's investigation, Respondent stated she "cannot provide contrary information to that already established during your investigation."

Discipline in Kansas

24. On or around February 21, 2020, the Kansas Board disciplined Respondent's Kansas license because Respondent falsely attested on her license renewal application that she had completed all continuing education hours between July 1, 2017 and June 30, 2019 required to renew her Kansas license.

25. This discipline included an assessment of a fine and mandatory additional continuing education.

26. Then, on or around April 14, 2020, the Kansas Board suspended Respondent's Kansas license because she falsified prescriptions for the purpose of obtaining and diverting drugs from her pharmacy employer and charged the cost to her children's company.

Federal Judgment

27. Respondent was indicted on three counts or about June 10, 2020, in the United States District Court, Eastern District of Missouri, Case No. 4:20CR275 RWS/PLC for the events occurring on March 15, 2020 in Farmington, Missouri; on March 20, 2020 in Farmington and Branson, Missouri; and on January 25, 2019 in the Baxter Springs, Kansas.

28. On or about October 27, 2020, Respondent pleaded guilty to Count 3 of the indictment and was found guilty of the felony offense of obtaining a controlled substance by fraud or forgery under 21 U.S.C. § 843(a)(3). She was sentenced to three years of probation and to pay a $5,000 fine.

Controlled substance violation

29. When Respondent dispensed controlled substance prescriptions to herself without valid prescriptions, she violated federal regulations concerning Schedule III controlled substances, to-wit:

> (a) A pharmacist may dispense directly a controlled substance listed in Schedule III, IV, or V that is a prescription drug as determined under section 503(b) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 353(b)) only pursuant to either a paper prescription signed by a practitioner, a facsimile of a signed paper prescription transmitted by the practitioner or the practitioner's agent to the pharmacy, an electronic prescription that meets the requirements of this part and part 1311 of this chapter, or an oral prescription made by an individual practitioner and promptly reduced to writing by the pharmacist containing all information required in § 1306.05, except for the signature of the practitioner. 21 CFR § 1306.21

Misbranding

30. A legend drug dispensed without a legitimate prescription is misbranded under federal law, which provides, in pertinent part:

> (b) Prescription by physician; exemption from labeling and prescription requirements; misbranded drugs; compliance with narcotic and marihuana laws
>
> (1) A drug intended for use by man which –
>
> > (A) because of its toxicity or other potentiality for harmful effect, or the method of its use, is not safe for use except under the supervision of a practitioner licensed by law to administer such drug; or
> >
> > (B) is limited by an approved application under section 355 of this title to use under the professional supervision of a practitioner licensed by law to administer such drug;
>
> shall be dispensed only:
>
> > (i) upon a written prescription of a practitioner licensed by law to administer such drug, or

(ii) upon an oral prescription of such practitioner which is reduced promptly to writing and filed by the pharmacist, or

(iii) by refilling any such written prescription if such refilling is authorized by the prescriber either in the original prescription or by oral order which is reduced promptly to writing and filed by the pharmacist. The act of dispensing a drug contrary to the provisions of this paragraph shall be deemed to

be an act which results in the drug being misbranded while held for sale. 21 U.S.C. §353(b)(1).

31. Misbranding drugs violates federal law, to-wit:

The following acts and the causing thereof are prohibited:

(k) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to, a food, drug, device, tobacco product, or cosmetic, if such act is done while such article is held for sale (whether or not the first sale) after shipment in interstate commerce and results in such article being adulterated or misbranded. 21 U.S.C. § 331(k)

32. Misbranding prescription drugs also violates Missouri law:

The following acts and the causing thereof within the state of Missouri are hereby prohibited:

(9) The alteration, mutilation, destruction, obliteration, or removal of the whole or any part of the labeling of, or the doing of any other act with respect to a food, drug, device, or cosmetic, if such act is done while such article is held for sale and results in such article being misbranded; §196.015(9), RSMo.

33. By dispensing prescription drugs for herself and her children without valid prescriptions over the course of two years at multiple pharmacies in Missouri and Kansas, Respondent misbranded legend drug products in interstate commerce in violation of §196.015, RSMo, 21 U.S.C. §353(b)(1), and 21 U.S.C. §331(k).

Inaccurate records

34. 20 CSR § 2220-2.080(1)-(3) states:

(1) In lieu of a non-electronic (manual) record-keeping system, a pharmacy may elect to maintain an electronic data processing (EDP) record keeping-system. All information concerning the compounding, dispensing, or selling by a pharmacy of any drug, device, or poison pursuant to a lawful prescription which is entered into an EDP system at any pharmacy shall be entered only by a licensed pharmacist or by a technician or intern pharmacist under the direct supervision and review of a licensed pharmacist. Prior to dispensing, a pharmacist shall personally verify the accuracy of prescription data entered into the EDP for each original prescription. The EDP system shall comply with all applicable state and federal controlled substance laws and regulations.

(2) EDP systems shall comply with the requirements of section 338.100, RSMo, and shall be capable of storing and retrieving the following information concerning the original filling or refilling of any prescription:

(A) A unique, sequential prescription label number;
(B) If applicable, a unique readily retrievable identifier;
(C) Date the prescription was prescribed;
(D) The date the prescription was initially filled and the date of each refill;
(E) Patient's full name, or if an animal, the species and owner's name;
(F) Patient's address or animal owner's address when a prescription prescribes a controlled substance;
(G) Prescriber's full name;
(H) Prescriber's address and Drug Enforcement Administration (DEA) number when a prescription specifies a controlled substance;
(I) Name, strength and dosage of drug, device or poison dispensed and any directions for use;
(J) Quantity originally dispensed;
(K) Quantity dispensed on each refill;
(L) Identity of the pharmacist responsible for verifying the accuracy of prescription data prior to dispensing on each original prescription;
(M) Identity of the pharmacist responsible for reviewing the final product prior to dispensing on each original and refill prescription, if different from the pharmacist verifying prescription data;
(N) The number of authorized refills and quantity remaining;
(O) Whether generic substitution has been authorized by the prescriber;
(P) The manner in which the prescription was received by the pharmacy (e.g., written, telephone, electronic, or faxed); and

> (Q) Any other change or alteration made in the original prescription based on contact with the prescriber to show a clear audit trail. This shall include, but is not limited to, a change in quantity, directions, number of refills, or authority to substitute a drug.
>
> (3) The information specified in section (2) shall be required and recorded in the EDP system prior to dispensing by a pharmacist or pharmacy.

35. Respondent violated § 20 CSR § 2220-2.080(1)-(3) by entering false and inaccurate data relating to prescriptions she entered, verified, and filled for herself and her children into the electronic data processing record keeping systems at Walgreens pharmacies.

36. As a result of the foregoing conduct, Respondent committed incompetency, misconduct, gross negligence, fraud, misrepresentation and dishonesty in the performance of her functions or duties as a Missouri licensed pharmacist.

JOINT CONCLUSIONS OF LAW

37. Respondent's conduct is cause for disciplinary action against her license to practice pharmacy under §338.055.2(2), (4)-(6), (8), (13), (15) and (17), RSMo:

> 2. The board may cause a complaint to be filed with the administrative hearing commission as provided by chapter 621, RSMo, against any holder of any certificate of registration or authority, permit or license required by this chapter or any person who has failed to renew or has surrendered his or her certificate of registration or authority, permit or license for any one or any combination of the following causes:
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> * * *
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> (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo contendere, in a criminal prosecution under the laws of any state or of the United States, for any offense reasonably related to the qualifications, functions or duties of any profession licensed or regulated under this chapter, for any offense an essential element of which is fraud, dishonesty or an act of violence, or for any offense involving moral turpitude, whether or not sentence is imposed;
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> * * *

(4) Obtaining or attempting to obtain any fee, charge, tuition or other compensation by fraud, deception or misrepresentation;

(5) Incompetency, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the performance of the functions or duties of any profession licensed or regulated by this chapter;

(6) Violation of, or assisting or enabling any person to violate, any provision of this chapter, or of any lawful rule or regulation adopted pursuant to this chapter;

* * *

(8) Denial of licensure to an applicant or disciplinary action against an applicant or the holder of a license or other right to practice any profession regulated by this chapter granted by another state, territory, federal agency, or country whether or not voluntarily agreed to by the licensee or applicant, including, but not limited to, surrender of the license upon grounds for which denial or discipline is authorized in this state;

* * *

(13) Violation of any professional trust or confidence;

* * *

(15) Violation of the drug laws or rules and regulations of this state, any other state or the federal government.

* * *

(17) Personal use or consumption of any controlled substance unless it is prescribed, dispensed, or administered by a health care provider who is authorized by law to do so.

JOINT AGREED DISCIPLINARY ORDER

A. Based upon the foregoing, the parties mutually agree and stipulate that the following shall constitute the disciplinary order entered by the Board in this matter under the authority of §621.045.4(3), RSMo. Respondent's pharmacist license, number 2019010826 is immediately **SUSPENDED for a period of SIX (6) MONTHS, followed by PROBATION for a period of FIVE (5) YEARS** ("disciplinary period"). The terms of discipline shall be:

The following terms apply for the entire disciplinary period.

1. Respondent shall comply with all applicable provisions of Chapter 338, Chapter 195, Chapter 196 and all applicable federal and state pharmacy/drug laws and regulations and all federal and state criminal laws. "State" here includes the State of Missouri and all other states and territories of the United States.

2. Respondent shall not serve as pharmacist-in-charge or manager-in-charge of any entity licensed or regulated by the Board, or as a preceptor for pharmacy interns or as a teaching member of any school or college of pharmacy. Additionally, Respondent shall not serve as a consultant required by a Board disciplinary order for any pharmacy/drug distributor.

3. Respondent shall keep the Board apprised of her current home, electronic mail (e-mail) and work addresses and telephone numbers. Respondent shall notify the Board of any change in Respondent's employer or Respondent's home or work address within ten (10) days of such change in a manner approved by the Board. For employer/work changes, Respondent's notification shall include the reasons for the change. If at any time Respondent is employed by a temporary employment agency or maintains employment that requires frequent daily or weekly changes of work location she must provide the Board a list of locations worked if requested by the Board or Board's representative.

4. If Respondent's license expires or becomes void/invalid, upon renewal or reapplication, Respondent's license shall be subject to all terms and conditions of discipline not previously satisfied, including any remaining suspension/probationary period.

5. Respondent shall cooperate with the Board's monitoring and investigation of Respondent's compliance with the terms and conditions of this Settlement Agreement. Respondent shall make herself available for personal interviews to be conducted by a member of the Board or the Board of Pharmacy staff. Said meetings shall be at the Board's discretion and may occur periodically during the disciplinary period.

6. Respondent shall respond to any written inquiry of the Board and provide any requested documentation/records within three (3) days of receipt of a written request from the

Board or the Board's authorized designee, or as otherwise requested by the Board/Board designee.

7. If requested by the Board, Respondent shall submit to a criminal history background check via the Board's approved vendor at Respondent's cost. Unless otherwise directed by the Board, Respondent shall submit the required fingerprints and undergo the requested criminal history background check within ten (10) days of the Board's request.

8. Respondent shall submit to any drug, alcohol or urinalysis testing requested by the Board, at Respondent's cost. Testing may be conducted on any human sample, including, but not necessarily limited to, urine, blood, breath, hair, nails, skin or saliva. The timing, manner and scheduling for testing is within the Board's sole discretion.

9. Respondent shall report any of the following occurrences to the Board, in writing, within seventy-two (72) hours of such occurrence:
    a. Any arrest or issuance of a criminal complaint;
    b. Any municipal/local arrest, citation or complaint relating to drugs, theft, shoplifting, burglary, possession of drug paraphernalia, driving or operating a motor vehicle under the influence/while intoxicated or illegally possessing, selling or purchasing alcohol, any drug or drug paraphernalia;
    c. A finding or plea of guilty or nolo contendre in any state or federal criminal proceeding to any criminal complaint, information or indictment, including, but not limited to, any deferred or diverted adjudication, order or agreement;
    d. A conviction of any crime, including, but not limited to, any Suspended Imposition of Sentence ("SIS") or Suspended Execution of Sentence ("SES");
    e. A finding by a court that Respondent has violated any term of her criminal probation/parole;
    f. Any discipline, citation, or other administrative action filed or taken against Respondent by any state board/committee of pharmacy, or any other state or federal agency.

    Failure to timely report any of the foregoing occurrences shall be considered a disciplinary violation.

10. If Respondent is currently or begins serving any period of criminal probation/parole, Respondent shall provide the name of her probation/parole officer to the Board, in writing, within ten (10) days of the effective date of this Agreement or within ten (10) days of the designation of a probation/parole officer. If Respondent's probation/parole officer is changed for any reason, Respondent shall submit the name of the replacement officer to the Board within ten (10) days of the change/modification. Respondent shall execute a release authorizing her probation or parole officer to provide to the Board any information relating to Respondent's probation or parole. Respondent shall maintain the release in effect and shall provide an updated release if requested by the Board.

11. Respondent shall file a "Disciplinary Compliance Report" with the Board in a form/manner approved by the Board. The Disciplinary Compliance Report shall be due by January 1 and July 1 of each calendar year. Respondent's final Disciplinary Compliance Report shall be filed no later than ninety (90) days before the end of the probationary period.

12. Respondent's failure to comply with any condition of discipline set forth herein constitutes a violation of this Agreement.

13. The parties to this Agreement understand that the Board of Pharmacy will maintain this Agreement as an open record of the Board as provided in Chapters 324, 338, 610, RSMo.

NOTICE TO EMPLOYERS

14. If applicable, Respondent shall notify any employer of the employer's need to apply for and receive the necessary state (misdemeanor/felony) and federal (felony) waivers from the Bureau of Narcotics and Dangerous Drugs and the Drug Enforcement Administration in order to be employed within a facility that maintains state or federal registrations for the purpose of storing, distributing or dispensing controlled substances.

15. Except as otherwise provided herein, "Employment" within the meaning of this Agreement shall include any full-time, part-time, temporary, relief or pharmacy management service as a pharmacist or any position for which a pharmacist license, pharmacy intern license or pharmacy technician registration is a requirement or criterion for employment, regardless of whether Respondent is an employee, independent contractor, volunteer, instructor or consultant. "Employment" shall also include any entity where legend drugs are stored, sold, dispensed or distributed.

16. Respondent shall notify any current or future employers of this action by providing a copy of this Settlement Agreement to the pharmacist-in-charge or manager-in-charge of any pharmacy or drug distributorship where Respondent is employed, on or before the effective date of discipline or prior to accepting any offer of employment.
    a. If Respondent is not or will not be employed by a pharmacy or drug distributor, the notice shall be provided to Respondent's direct supervisor at Respondent's current/prospective place of employment, as defined herein, within the timeframes required by this section.
    b. For purposes of this Agreement, a pharmacy shall also include, but is not limited to, any location providing pharmacy services for inpatients of a licensed hospital or residents of a long term care facility.

17. Respondent shall cause the pharmacist-in-charge, manager-in-charge or supervisor to sign a written acknowledgment on a form approved by the Board indicating that he/she has received and reviewed the Settlement Agreement and the terms and conditions imposed thereby. The written acknowledgement shall be signed and dated by the applicable pharmacist-in-charge, manager-in-charge or supervisor and shall be submitted to the Board by Respondent for verification within ten (10) days of the dated signature.

Respondent shall be responsible for ensuring the required signed acknowledgments are timely submitted to the Board.

18. If at any time Respondent is employed by a temporary employment agency, Respondent must provide each employment agency a copy of this Settlement Agreement prior to being assigned to a temporary employment site. Respondent shall also provide a copy of the Settlement Agreement to each pharmacist-in-charge or manager-in-charge of each pharmacy or drug distributor where Respondent is assigned to work. If the pharmacist-in-charge or manager-in-charge is not present at the employment site, a copy of the Settlement Agreement shall be left at the applicable site for the pharmacist-in-charge/manager-in-charge to review. Respondent shall provide an accurate listing of all employment/work sites where Respondent has been assigned if requested by the Board or the Board's authorized designee.

19. Licensee shall execute any release or provide any authorization necessary for the Board to obtain records of Respondent's employment during the period covered by this Settlement Agreement.

CONTINUING EDUCATION

20. Within three (3) months of the effective date of this Settlement Agreement, Respondent shall take and pass the Board approved Pharmacy Practice Guide Continuing Education Examination, if available. Respondent shall register and complete the required examination via the Board's website or as otherwise requested by the Board.

21. Respondent shall take a minimum of 6.0 continuing education (0.60 CEUs) hours in pharmacy law during each biennial pharmacist renewal period that is completed while Respondent is on discipline. The continuing education required by this section shall comply with 20 CSR 2220-7.080 and may be used to satisfy the licensee's biennial continuing education requirement. Proof of compliance with the continuing education requirements of this section shall be submitted to the Board on or before October 31st of each biennial pharmacist renewal period.

CHEMICAL DEPENDENCY

22. Respondent shall abstain completely from the use or consumption of alcohol in any form, including over-the-counter medications and mouthwashes. The presence of any alcohol or alcohol metabolite whatsoever in a biological fluid sample shall constitute a violation of discipline.

23. Respondent shall abstain completely from the personal use of any controlled substance or other drug for which a prescription is required unless use of the drug has been prescribed by an authorized prescriber with whom Respondent has a bona fide patient relationship. Upon request, Respondent shall execute a medical release authorizing the prescriber to release treatment/medical records to the Board and/or communicate with the Board, or its representative, regarding Respondent's treatment. The presence of any

controlled substance for which Respondent does not hold a valid prescription shall constitute a violation of discipline.

24. Respondent shall inform any prescriber issuing a prescription for Respondent that Respondent has been disciplined by the Board for issues relating to chemical misuse, dependency or impairment. Additionally, Respondent shall provide a copy of this Agreement to all prescribers issuing/renewing a controlled substance, nalbuphine, or tramadol prescription to Respondent. Disclosure shall be made before the issuance of any new prescription(s). In the case of renewed/refilled prescriptions, disclosure shall be made within ten (10) days of the effective date of this Agreement.

25. Within 10 days of the effective date of this Agreement, Respondent shall provide the Board office a copy of all controlled substance prescriptions in Respondent's possession on the effective date of discipline. In lieu of prescription copies, Respondent may provide a list of all controlled substances prescribed on a form provided by the Board.

26. Respondent shall provide the Board with a copy of each prescription received, controlled or non-controlled, within five (5) days of Respondent's receipt of the prescription.

27. Respondent shall ensure that she is not in the same physical location as individuals who are using illicit drugs/substances, even if Respondent is not personally ingesting the drug/substance.

28. Respondent shall not be personally involved in any aspect of a pharmacy's processing, dispensing, or billing of any prescription for herself or any family member, including, but not limited to, recording any telephone prescription or verbal refill authorization.

29. Respondent shall execute a release that allows the Board to obtain treatment, medical, assessment, attendance, counseling or evaluation records from any person or support groups providing treatment, evaluation or counseling. Licensee shall take any and all steps necessary to continue the release(s) in effect for the entire period covered by this Agreement. If requested by the Board, Respondent shall provide any new or additional release(s) within three (3) days of a request in a form provided by the Board.

30. Respondent shall take all necessary steps to ensure that any reports required by this Agreement are timely submitted to the Board.

31. If directed by the Board, Respondent shall become a participant in the Board's Well-Being Program established pursuant Section 338.380, RSMo, for the remainder of the disciplinary period, when the Program is fully operational. When notified by the Board, Respondent shall enroll in the Program as directed by the Board. Respondent shall bear all the costs of the Program.

32. Respondent shall bear all costs of complying with this Settlement Agreement.

33. Before returning to the practice of pharmacy, Respondent shall undergo an evaluation by her Board approved chemical dependency counselor. The evaluation shall be for any issue, disorder, or disease which poses a risk to the safe practice of pharmacy (including chemical dependency) and specifically address Respondent's "fitness to practice pharmacy" and current recommendations as to the Respondent's ability to return to work as a licensed pharmacist. Respondent shall cause counselor to submit their evaluation report to the Board within ten (10) days of the evaluation. Respondent may not practice pharmacy until the evaluation declares them fit to practice.

DRUG TESTING:

34. Respondent shall participate in the Board's random drug testing/urinalysis program administered by FSSolutions, the Board's approved drug testing/urinalysis vendor.

35. Licensee shall enroll in FSSolutions' Professional Health Monitoring Program, on or before the effective date of this Settlement Agreement. Respondent shall comply with all requirements imposed by FSSolutions for the professional Health Monitoring Program, including, but not limited to, any drug test/urinalysis requirements, any scheduling requirements, any reporting or telephone contact requirements and any requirements for payment of fees, purchasing/maintaining chain of custody (COC) forms or other required program documents/materials.

36. Respondent shall undergo periodic drug testing/urinalysis as requested by the Board or FSSolutions, at Respondent's cost. Testing may be conducted on any human sample, including, but not necessarily limited to, urine, blood, breath, hair, nails, skin or saliva. The timing, manner and scheduling for testing shall be within the Board's sole discretion.

37. If the Board's approved drug testing/urinalysis vendor changes from FSSolutions, Respondent shall participate in and comply with any drug testing/urinalysis requirements requested by the Board or any subsequent Board approved vendor, including, but not limited to, any requirements for program enrollment, test scheduling, reporting or telephone contact, payment of fees, purchasing/maintaining chain of custody (COC) forms or any other required documents/materials.

CHEMICAL DEPENDENCY EVALUATION:

38. Within sixty (60) days of the effective date of this Agreement, Respondent shall undergo an initial chemical dependency evaluation performed by a licensed or certified chemical dependency professional approved by the Board.

39. The initial chemical dependency evaluator must be approved by the Board prior to the evaluation. The name and documentation of the credentials of the required chemical dependency evaluator shall be submitted to the Board for approval within thirty (30) days after the effective date of this Agreement. Respondent shall provide a copy of this Agreement to the approved evaluator before the initial evaluation is performed.

40. Respondent shall cause the evaluator to submit an initial evaluation report to the Board within ten (10) days after the evaluation has been completed. The evaluation report shall be mailed directly to the Missouri Board of Pharmacy, P.O. Box 625, Jefferson City, Missouri 65102, and shall include:
    a. An analysis/assessment of licensee's present state of impairment and whether Respondent is physiologically or psychologically alcohol or drug dependent;
    b. A description of the tests performed and the results;
    c. Discussion of relevant clinical interview findings/interpretations;
    d. Specification of any DSM IV diagnosis/es;
    e. Assessment of Respondent's fitness/ability to safely engage in the practice of pharmacy without posing a threat to Respondent or the public;
    f. An assessment for future prospects for recovery, and;
    g. Any appropriate treatment recommendations/plan, including, but not limited to, the recommended beginning date of treatment, nature of treatment (i.e.- outpatient, inpatient, after care), treatment duration and any recommended after care or support group attendance. If there is no diagnosis requiring treatment, this should be reported in the evaluation.

41. Respondent shall execute a medical release for the approved evaluator that allows the Board to obtain the evaluation and any supporting documents/medical records.

IF TREATMENT IS NOT RECOMMENDED:

42. If the approved chemical dependency evaluator determines that treatment, counseling or further support group attendance is not recommended, the finding must be specifically documented in the required evaluation report.

43. The Board reserves the right to request a subsequent chemical dependency evaluation of Respondent at any time during the disciplinary period. If requested by the Board, the evaluations shall be performed by a licensed or certified chemical dependency professional approved or designated by the Board. Respondent shall submit to the examination as requested by the Board at Respondent's expense. If further evaluation is requested by the Board, Respondent shall comply with all provisions of this Order regarding the initial chemical dependency evaluation, including, submission of an evaluation report and compliance with all treatment, counseling or evaluation recommendations.

44. If no further treatment is recommended, Respondent shall continue to comply with all remaining provisions of this Settlement Agreement, including, but not limited to, all drug/urinalysis testing and reporting requirements.

IF TREATMENT IS RECOMMENDED:

45. Respondent shall follow any recommendations made by the approved chemical dependency evaluator for treatment, counseling, evaluation, after care or support group attendance (i.e.- Narcotics/Alcoholics Anonymous).

46. All treatment/counseling providers or programs used to satisfy the recommendations of the chemical dependency evaluator or the requirements of this Agreement must be approved by the Board in advance. The Board shall only approve entities/persons sufficiently qualified and licensed to provide the applicable treatment, evaluation or counseling.
    a. If the recommended treatment, counseling or evaluation will be provided by any person or entity other than the Board approved evaluator/program, Respondent shall submit written documentation of the credentials and qualifications of the proposed provider/program to the Board for approval within ten (10) days of a recommendation from the Board approved chemical dependency evaluator.
    b. For individual providers, documentation shall include a listing of any applicable professional designation(s)/license(s) and a resume/curriculum vitae. For entities, documentation shall include a detailed description of the program, participant requirements, individual provider qualifications and length of program operation.

47. All chemical dependency treatment programs shall comply with the provisions of this Settlement Agreement and 20 CSR 2220-2.170(6), including, but not limited to, the following:
    a. A written agreement or contract executed between Respondent and the program/provider, outlining the responsibilities of each party for a successful treatment and monitoring program. The agreement must include a provision for sharing information concerning all aspects of therapy between the treatment facility/counselors and the Board. The agreement/contract must also include a provision authorizing the program/provider to report to the Board any violation of the treatment contract/agreement by Respondent, including, but not limited to, any positive drug/urinalysis test for any substance not supported by a valid prescription.
    b. The treatment program must include randomized and witnessed body fluid testing and analysis.
    c. Respondent shall cause Progress Reports to be submitted to the Board by the approved program/provider as follows:
        1. Inpatient therapy— Monthly reports;
        2. Outpatient therapy— Quarterly reports; and
        3. After-care programs— Semiannual reports.
    d. Progress Reports shall be based on a recent evaluation/consultation. Such evaluation/consultation shall not have occurred more than six (6)

weeks prior to the Progress Report due date established herein. At a minimum, the Progress Report shall include:

i. An evaluation of Respondent's current progress and prognosis;
ii. An assessment of Respondent's compliance with all treatment recommendations/plan;
iii. An assessment of Respondent's fitness/ability to safely engage in the practice of pharmacy without posing a threat to Respondent or the public, and;
iv. Any additional or revised treatment recommendations/plans. Respondent shall fully comply with the revised treatment recommendation/plan.

48. **Support Group Attendance:** If support group attendance is recommended by an approved evaluator/provider, Respondent shall attend support group meeting(s) as recommended (i.e.- Narcotics Anonymous, Alcohol Anonymous, Al-Anon). Respondent shall submit proof of attendance to the Board with Respondent's Disciplinary Compliance Report. Attendance documentation shall include the date, time, and place of each meeting and shall bear a signature or abbreviated signature of another person verifying attendance.

49. Respondent shall notify the Board immediately if Respondent voluntarily or involuntarily ceases treatment or counseling with the Board approved provider. Notification shall include the date of cessation and the reasons for ceasing treatment/counseling. Respondent shall submit the name of a replacement treatment/counseling provider within thirty (30) days of ceasing treatment/counseling.

50. If Respondent's treatment is successfully completed at any time during the disciplinary period, Respondent shall cause the Board-approved chemical dependency professional to submit a report of final evaluation/summary. The final evaluation/summary shall include:

a. A statement that Respondent has successfully completed treatment;
b. An assessment of Respondent's fitness/ability to safely engage in the practice of pharmacy without posing a threat to Respondent or the public, and;
c. Any recommendations for after care or support group attendance. If continued after care/support group attendance is recommended, Respondent shall comply with all terms in this Settlement Agreement related to support group attendance and documentation.

51. The Board reserves the right to request a subsequent chemical dependency evaluation of Respondent at any time during the disciplinary period. If requested by the Board, the evaluations shall be performed by a licensed or certified chemical dependency professional approved or designated by the Board. Respondent shall submit to the examination as requested by the Board at Respondent's expense. Respondent shall

comply with all provisions of this Agreement regarding the initial chemical dependency evaluation, including, submission of an evaluation report and compliance with all treatment, counseling or evaluation recommendations.

52. If treatment is completed, Respondent shall continue to comply with all remaining provisions of this Settlement Agreement, including, but not limited to, all drug/urinalysis testing and reporting requirements.

MENTAL HEALTH

53. Within 10 days of the effective date of this Order/Agreement, Respondent shall provide the Board office a copy of all controlled substance prescriptions in Respondent's possession on the effective date of discipline. In lieu of prescription copies, Respondent may provide a list of all controlled substances prescribed in a form provided by the Board.

54. Respondent shall execute a release that allows the Board to obtain treatment, medical, assessment, attendance, counseling or evaluation records from any person or support groups providing treatment, evaluation or counseling. Licensee shall take any and all steps necessary to continue the release(s) in effect for the entire period covered by this agreement. If requested by the Board, Respondent shall provide any new or additional release(s) within three (3) days of a request in a form provided by the Board.

55. Respondent shall take all necessary steps to ensure that any reports required by this Order/Agreement are timely submitted to the Board.

56. If directed by the Board, Respondent shall become a participant in the Board's Well-Being Program established pursuant Section 338.380, RSMo for the remainder of the disciplinary period, when the program is fully operational. When notified by the Board, Respondent shall enroll in the Program as directed by the Board. Respondent shall bear all costs of the Program.

57. Respondent shall bear all costs of complying with this Disciplinary Order/Settlement Agreement.

58. Before returning to the practice of pharmacy, Respondent shall undergo an evaluation by a Board approved mental health counselor. The evaluation shall be for any issue, disorder, or disease which poses a risk to the safe practice of pharmacy (including chemical dependency) and specifically address Respondent's "fitness to practice pharmacy" and current recommendations as to the Respondent's ability to return to work as a licensed pharmacist. Respondent shall cause counselor to submit their evaluation report to the Board within ten (10) days of the evaluation. Respondent may not practice pharmacy until the evaluation declares them fit to practice.

MENTAL HEALTH EVALUATION:

59. Within sixty (60) days of the effective date of this Order/Agreement, Respondent shall undergo an initial mental health evaluation performed by a licensed or certified mental health professional approved by the Board. The evaluation shall be for any clinically significant disorder which poses any risk to the safe practice of pharmacy (including chemical dependency). Respondent shall provide a copy of this Order/Agreement to the approved evaluator before the initial evaluation is performed.

60. The initial mental health evaluator must be approved by the Board prior to the evaluation. The name and documentation of the credentials of the required evaluator shall be submitted to the Board for approval within thirty (30) days after the effective date of this Order/Agreement.

61. Respondent shall cause the evaluator to submit an initial evaluation report to the Board within ten (10) days after the evaluation has been completed. The evaluation report shall be submitted directly to the Board and shall include:
    a. An analysis/assessment of Respondent's present state of mental health;
    b. A description of the tests performed and the results;
    c. Discussion of relevant clinical interview findings/interpretations;
    d. Specification of any DSM IV diagnosis/es;
    e. Assessment of Respondent's fitness/ability to safely engage in the practice of pharmacy without posing a threat to Respondent or the public;
    f. An assessment for future prospects for recovery, and;
    g. Any appropriate treatment recommendations/plan, including, but not limited to, the recommended beginning date of treatment, nature of treatment (i.e.- outpatient, inpatient, after care), treatment duration and any recommended after care or support group attendance. If there is no diagnosis requiring treatment, this should be reported in the evaluation.

62. Respondent shall execute a medical release that allows the Board to obtain the evaluation and any supporting documents/medical records.

63. If directed by the Board, Respondent shall become a participant in the Board's Well-Being Program established pursuant Section 338.380, RSMo for the remainder of the disciplinary period, when the Program is fully operational. When notified by the Board, Respondent shall enroll in the Program as directed by the Board. Respondent shall bear all the costs of the Program.

IF TREATMENT IS NOT RECOMMENDED:

64. If the approved mental health evaluator determines that further treatment, counseling, evaluation or support group attendance is not recommended and that Respondent is mentally fit to safely practice pharmacy, the finding must be specifically documented in the required evaluation report.

65. The Board reserves the right to request a subsequent mental health evaluation of Respondent at any time during the disciplinary period. If requested by the Board, the evaluations shall be performed by a licensed or certified mental health professional approved or designated by the Board. Respondent shall submit to the examination as requested by the Board at Respondent's expense. If further evaluation is requested by the Board, Respondent shall comply with all provisions of this Order/Agreement regarding the initial mental health evaluation, including, submission of an evaluation report and compliance with all treatment, counseling or evaluation recommendations.

66. If no further treatment is recommended, Respondent shall comply with all remaining provisions of this Disciplinary Order/Settlement Agreement, including, but not limited to, all drug/urinalysis testing and reporting requirements.

IF TREATMENT IS RECOMMENDED:

67. Respondent shall follow any recommendations made by the approved mental health evaluator for treatment, counseling, evaluation, after care or support group attendance.

68. All treatment/counseling providers or programs used to satisfy the recommendations of the mental health evaluator or the requirements of this Order/Agreement must be approved by the Board in advance. The Board shall only approve entities/persons sufficiently qualified and licensed to provide the applicable treatment, evaluation or counseling.
    a. If the recommended treatment, counseling or evaluation will be provided by any person or entity other than the Board approved evaluator/program, Respondent shall submit written documentation of the credentials and qualifications of the proposed provider/program to the Board for approval within ten (10) days of a recommendation from the Board approved mental health evaluator.
    b. For individual providers, documentation shall include a listing of any applicable professional designation(s)/license(s) and a resume/curriculum vitae. For entities, documentation shall include a detailed description of the program, participant requirements, individual provider qualifications and length of program operation.

69. All mental health treatment or counseling programs shall comply with the provisions of this Settlement Agreement and the following requirements:
    a. A written agreement or contract must be provided and executed between Respondent and the program/provider, outlining the responsibilities of each party for successful treatment/counseling. The agreement must include a provision for sharing information concerning all aspects of therapy between the treatment facility/counselors and the Board. The agreement/contract must also include a provision authorizing the program/provider to report to the Board any violation of the treatment, or substantial non-compliance with, the contract/agreement by Respondent.

b. Respondent shall cause Progress Reports to be submitted to the Board by the approved program/provider as follows:
    1. Inpatient therapy, evaluation or counseling— Monthly reports, and;
    2. Outpatient therapy, evaluation or counseling and After-Care reports— Every six (6) months.

c. Progress Reports shall be based on a recent evaluation/consultation. Such evaluation/consultation shall not have occurred more than six (6) weeks prior to the Progress Report due date established herein. At a minimum, the Progress Report shall include:
    i. An evaluation of Respondent's current progress and prognosis;
    ii. An assessment of Respondent's compliance with all treatment or counseling recommendations/plan;
    iii. An assessment of Respondent's mental fitness/ability to safely engage in the practice of pharmacy without posing a threat to Respondent or the public, and;
    iv. Any additional or revised treatment recommendations/plans. Respondent shall fully comply with the revised treatment recommendation/plan.

70. **Support Group Attendance:** If support group attendance is recommended by an approved evaluator/provider, Respondent shall attend any support group meeting(s) as recommended by the Board approved evaluator/treatment provider. Respondent shall submit proof of attendance to the Board with Respondent's Disciplinary Compliance Report. Attendance documentation shall include the date, time, and place of each meeting and shall bear a signature or abbreviated signature of another person verifying attendance.

71. Respondent shall notify the Board immediately if Respondent voluntarily or involuntarily ceases treatment or counseling with the Board approved provider. Notification shall include the date of cessation and the reasons for ceasing treatment/counseling. Respondent shall submit the name of a replacement treatment/counseling provider within thirty (30) days of ceasing treatment/counseling.

72. If Respondent's treatment is successfully completed at any time during the disciplinary period, Respondent shall cause the Board-approved mental health professional to submit a report of final evaluation/summary. The final evaluation/summary shall include:
    a. A statement that Respondent has successfully completed treatment;
    b. An assessment of Respondent's mental fitness/ability to safely engage in the practice of pharmacy without posing a threat to Respondent or the public, and;
    c. Any recommendations for after care or support group attendance. If continued after care/support group attendance is recommended, Respondent shall comply with all terms in this Disciplinary Order/Settlement Agreement related to support group attendance and documentation.

73. The Board reserves the right to request a subsequent mental health evaluation of Respondent at any time during the disciplinary period. If requested by the Board, the evaluations shall be performed by a licensed or certified mental health professional

approved or designated by the Board. Respondent shall submit to the examination as requested by the Board at Respondent's expense. Respondent shall comply with all provisions of this Order/Agreement regarding the initial mental health evaluation, including, submission of an evaluation report and compliance with all treatment, counseling or evaluation recommendations.

74. If treatment is completed, Respondent shall continue to comply with all remaining provisions of this Disciplinary Order/Settlement Agreement.

The following terms apply only during the period of SUSPENSION:

SUSPENSION

1. Respondent shall not engage in any activity or conduct in the State of Missouri for which a license as a pharmacist, intern pharmacist, or a registration as a pharmacy technician is required.

2. Respondent shall not practice pharmacy nor do any act involving drug selection, ordering of legend drugs for a licensed pharmacy or drug distributor, drug manufacturing, compounding, dispensing or patient consultation.

3. Respondent shall not direct or control any aspect of the practice of pharmacy. Additionally, Respondent shall not manage, administer or be a consultant to any licensee of the Board or have access to or control the ordering, manufacturing or dispensing of legend drugs or controlled substances. Respondent may, however, continue to own or hold an interest in any licensed premises in which she holds an interest at the time this Agreement becomes effective, unless otherwise specified by this Agreement.

4. Respondent shall not be physically present in a pharmacy during suspension except as a bona fide customer. Respondent may, however, be employed at a facility that maintains a pharmacy, so long as that employment does not include the practice of pharmacy, require registration as a pharmacy technician, or require and/or permit Respondent's physical presence in the licensed (permit) area of the facility or any area used to store, stock or dispense legend drugs.

5. Respondent shall not serve as the manager-in-charge of any drug distributor during the period of suspension and shall not direct or control any aspect of drug distribution in this state. Respondent may continue to own or hold any interest in a drug distributor which Respondent holds at the time this Agreement becomes effective unless otherwise specified by this Agreement.

6. Respondent shall not use the term "R.Ph.", "Pharmacist", or any other title or designation which would signify that Respondent can legally practice pharmacy, in either printed or verbal form, during the suspension period.

7. Respondent shall not be personally involved in any aspect of a pharmacy's processing, dispensing, or billing of any prescription for herself or any family member.

8. Respondent shall not post any indicia of her Missouri pharmacist licensure in a public space (i.e.- the original wall-hanging certificate, the computer generated 5" x 7" license, or the wallet card).

B. Upon the expiration of said discipline, Respondent's license as a pharmacist in Missouri shall be fully restored if all other requirements of law have been satisfied; provided, however, that in the event the Board determines that Respondent has violated any term or condition of this Agreement, the Board may, in its discretion, after an evidentiary hearing, vacate and set aside the discipline imposed herein and may suspend, revoke or otherwise lawfully discipline Respondent.

C. If the Board determines that Respondent has violated a term or condition of this Settlement Agreement, which violation would also be actionable in a proceeding before the Administrative Hearing Commission or the circuit court, the Board may elect to pursue any lawful remedies or procedures afforded it and is not bound by this Settlement Agreement in its determination of appropriate legal actions concerning that violation. If any alleged violation of this Settlement Agreement occurred during the disciplinary period, the Board may choose to conduct a hearing before it either during the disciplinary period, or as soon thereafter as a hearing can be held to determine whether a violation occurred and, if so, it may impose further discipline. The Board retains jurisdiction to hold a hearing to determine if a violation of this Settlement Agreement has occurred.

D. No order shall be entered by the Board pursuant to the preceding paragraph of this Agreement without notice and an opportunity for hearing before the Board in accordance with the provisions of Chapter 536, RSMo.

E. The terms of this Settlement Agreement are contractual, legally enforceable, and binding, not merely recital. Except as otherwise contained herein, neither this settlement agreement not any of its provisions may be changed, waived, discharged, or terminated, except by an instrument in writing signed by the party against whom the enforcement of the change, waiver, discharge, or termination is sought.

F. Respondent, together with her heirs and assigns, and her attorneys, do hereby waive and release, acquit and forever discharge the Board, its respective members and any of its employees, agents, or attorneys, including any former board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action, fees, costs and expenses, and compensation, including but not limited to, any claims for attorney's fees and expenses, including any claims pursuant to Section 536.087, RSMo, or any claim arising under 42 U.S.C. § 1983, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this Settlement Agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this Settlement Agreement in that it survives in perpetuity even in the event that any court of law deems this Settlement Agreement or any portion thereof void or unenforceable.

RESPONDENT, AS EVIDENCED BY THE INITIALS ON THE APPROPRIATE LINE,

_____ **REQUESTS**

__✓__ **DOES NOT REQUEST**

THE ADMINISTRATIVE HEARING COMMISSION TO DETERMINE IF THE FACTS SET FORTH HEREIN ARE GROUNDS FOR DISCIPLINING RESPONDENT'S LICENSE.

If Respondent has requested review, Respondent and Board jointly request that the Administrative Hearing Commission determine whether the facts set forth herein are grounds for disciplining Respondent's license and issue findings of fact and conclusions of law stating that the facts agreed to by the parties are grounds for disciplining Respondent's license. Effective fifteen (15) days from the date the Administrative Hearing Commission determines that the Settlement Agreement sets forth cause for disciplining Respondent's license, the agreed upon discipline set forth herein shall go into effect.

If Respondent has not requested review by the Administrative Hearing Commission, the Settlement Agreement goes into effect fifteen (15) days after the document is signed by the Board's Executive Director.

RESPONDENT

TAMARA KOLACNY
aka Tamara Nyachira

Tamara Kolacny
aka Tamara Nyachira

Date: 2/18/2021

PETITIONER

MISSOURI BOARD OF PHARMACY

By:

Kimberly Grinston
Executive Director

Date: 2-26-2021

NEWMAN, COMLEY & RUTH P.C.

By:

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